

Review Updates on the Non-Controversial Issues

last updated on 8/13/14

New Development

Recommended Decision: Approve

Concern Raised in Proposed Decision:

Ex. 5 - Deliberative

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Reason for Recommended Action: State has finalized TMDL Implementation Guidance as requested and satisfied all three Enforceable Policies and Mechanisms (EP&Ms) elements needed for approving its voluntary approach. Rationale for interim approval is very strong.

Revisions to Proposed Rationale: Decision flipped from proposing disapproval last December to interim approval now. Rationale rewritten to reflect TMDL implementation guidance has been finalized and EP&Ms have been met.

Concerns raised during public comment period: None. Very few comments on New Development (5 commenters), and all general in nature. None challenge Oregon's TMDL Implementation Plan approach for meeting this management measure (MM).

Status: Rationale drafted; summary comments drafted; response to comments in progress.

On-Site Disposal Systems (OSDS) Inspections

Recommended Decision: Approve

Concern Raised in Proposed Decision: None on strength of Oregon's newly fortified voluntary/incentive approach, although the State's EP&M approach is not ideal. However, legal team (NOAA, EPA HQ & R10) does not believe Oregon's EP&M shortcoming presents a basis for disapproval. Also, Oregon cites its rulemaking authority as a backup authority, which creates a new precedent for remaining conditionally approved coastal states to follow.

Reason for Recommended Action: Oregon has developed a strong voluntary/incentive-based approach that includes an adequate commitment of state resources and the required tracking and monitoring elements.

Revisions to Proposed Rationale: Decision flipped from proposing disapproval last December to interim approval now. Rationale rewritten to describe how programmatic gaps have been closed/addressed and EP&Ms have been met.

Concerns raised during public comment period: 12 commenters noted need for improvements in OSDS maintenance and/or inspections. Most comments were general; none challenge Oregon's plan for meeting the OSDS Inspections MM, which is not surprising, given that it is mostly new in 2014.

Status: Rationale drafted; summary comments drafted; response to comments in progress.

Forestry Landslides

Recommended Decision: Disapprove

Concerns Raised in the Proposed Decision: Timber harvests on unstable, steep terrain can result in increases in landslide rates which contribute to water quality impairments. A significant number of studies continue to show increases in landslide rates after clear-cutting compared to unmanaged forests in the Pacific Northwest. The State does not have forestry management measures in place to protect high-risk landslide areas to ensure water quality standards maintained and designated uses are fully supported.

Reason for Recommended Action: While the State adopted more protective forestry rules in the early 2000s to reduce landslide risks to life and property and promote voluntary practices to reduce landslide risks through the Oregon Plan, the State does not have additional forestry management measures to protect high-risk landslide areas to ensure water quality standards and designated uses are achieved. Oregon has not provided any new programs or initiatives to reverse our December 2013 decision on this issue.

Revisions to Proposed Rationale: The final rationale will reference additional science to show that harvesting and road construction on high-risk landslide areas does increase risk of landslides and impact water quality.

Concerns Raised During Public Comment Period: Some commenters acknowledged that landslides caused by logging practices such as clear cutting are a real problem in Oregon and additional management measures are necessary to address these impacts. It was noted that Oregon does not have sufficient programs in place to control non-point pollution from forestry practices, particularly due to logging on private lands.

Others expressed their disagreement with the federal agencies' recent decision and argued that the evidence provided by the federal entities was misleading, only focusing on "landslide density relationships" rather than considering the "total number of landslides triggered during major storms". In addition, it was argued that NOAA and EPA have not offered objective evidence that additional management measures are needed to maintain water quality. One commenter recommended that NOAA and EPA consider a broader scale view over longer timeframes to evaluate whether water quality and designated uses are impaired. The commenter added that the federal agencies have not produced any evidence that landslides resulting from forest management activities have caused exceedances in water quality or negatively impacted aquatic life.

Status: Rationale drafted but still working to improve science discussion; summary comments drafted; response to comments not yet started.

Responding to Public Comments on Other Aspects of Oregon's Coastal Nonpoint Program that We Did Not Solicit Comments

Recommended Action: Acknowledge comments received. State that we did not solicit comments on these aspects of Oregon's program and are only considering comments related to new development, OSDS, additional management measures for forestry, agriculture, and general comments regarding CZARA at this time. There will be another opportunity for the public to comment on these specific aspects of Oregon's program when NOAA and EPA propose to approve Oregon's program.

Reason for This Response:

Avoids responding substantively to comments that may indicate a decision the federal agencies have made about elements of Oregon's program until we are assured we have received all comments and information on these MMs.

Avoids a providing a substantive response that may conflict the decision and statements made in the rationale we will draft once we propose approval of these MMs.

Next Steps:

Develop standard response that undergoes technical, policy, managerial and legal review.

Response to General Comments

Topics of General Comments included:

- Overall support/lack of support for proposed decision
- Suitability of voluntary approaches to meet CZARA requirements
- NOAA/EPA holding EPA to a higher standard
- CZARA requires state to address issues outside of its control
- State should have more time to develop CNP
- CNP needs to address climate change
- Effectiveness of Oregon's monitoring, tracking, and enforcement efforts
- Questions NOAA/EPA's authority for establishing additional MMs
- Suitability of state's process for identifying CCAs and additional MMs.

Status: Summary of comments drafted; responses to 14 summary comments drafted (3 more to go although a few responses may need to be tweaked based on final decisions for other management measures)